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BBA No. 97/BBA of 2020

Or 04
30-11-2020

Present:

All 04 accused/petitioners on interim bail, along with Jabir Hussain and Insaf Ali Advocates
Complainant Mashi Khan, along with Sana Ullah Khan Advocate
APP Syed Aamir Shah for State

Petitioners (1) **Bonair Khan** s/o Areef Khan, (2) **Saif Ullah** s/o Arif Khan, (3) **Mudeer** s/o Arif Khan and (4) **Younas Khan** s/o Bonair Khan; all residents of caste Stori Khel, Lower Orakzai; are seeking **Bail Before Arrest** in case **FIR No. 118** dated **18-11-2020**, registered in **Police Station; Lower Orakzai**, under sections **506/447/427/148/149 PPC**.

The allegation against accused/petitioners is; that, on 17-10-2020 at 10:00 a.m., they trespassed into the cement-block manufacturing plant of complainant (Mashi Khan) - while the complainant was busy in block manufacturing process, along with 03 other persons; that accused Younas Khan was armed with pistol and the remaining 03 accused with sticks; that they told the complainant to stop work and started fighting with complainant party; that they started beating complainant party when accused/petitioner Bonair Khan took out his pistol and starting firing on the complainant party, while the remaining accused attacked the complainant party with rocks and sticks; that one person from the complainant party got injured on his right hand; that the accused party damaged cement-blocks and criminally intimidated the complainant party with death - if work was not stopped.

The instant case was registered on the directions of Ex-Officio Justice of Peace, issued in an application filed by the complainant u/s 22-A CrPC.

Arguments of counsels for the parties were heard; the available record perused. Tentative assessment of which, for the purpose of deciding instant petition, shows that:

1. The incident allegedly occurred on 17-10-2020 while the time of report is given in FIR 05-11-2020. No explanation is available on record for this inordinate long delay.

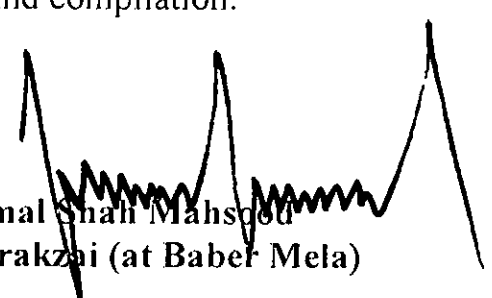
JAMAL SHAH MAHSUD
Sessions Judge
District & Sessions Judge
Orakzai at Hangu

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2. One Haji Gul, belonging to complainant party, was reported to have received injury on his hand; however, no MLC is available on record.
3. No crime empties have been recovered from the spot.
4. The allegation as made in FIR was of criminal intimidation, however, during investigation the complainant party and IO have alleged attempt to commit murder. This exaggeration clearly points to malafide on part of complainant and local police.
5. The offences u/s 447 and 427 PPC are bailable.
6. There seems to be civil dispute between the parties in respect of the land on which the cement-block manufacturing plant is present. It seems that the complainant is trying to settle his civil dispute with the accused party through criminal process.
7. The accused/petitioners joined investigation since grant of interim BBA on 23-11-2020, but so far, no further incriminating material evidence has been brought on record against them.
8. The allegation against the accused/petitioners call for further inquiry into their guilt. No useful purpose could be served by sending the accused behind bars only to be released on regular bail.

In these circumstances, malafide on part of complainant cannot be ruled out. Resultantly, the instant pre-arrest bail petition of accused/petitioners **Bonair Khan, Saif Ullah, Mudeer and Younas Khan** is **accepted** and the ad-interim pre-arrest bail already granted to them is confirmed on the existing bail bonds. Copy of this order be placed on record. Record be returned while this file be consigned to record room after necessary completion and compilation.

Announced
30-11-2020


Jamal Shah Mahsood
ASJ-I, Orakzai (at Baber Mela)